PERBADANAN KEMAJUAN PERTANIAN SELANGOR v. JW PROPERTIES SDN BHD

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN PCA
ZAINUN ALI FCJ
ABU SAMAH NORDIN FCJ
RAMLY ALI FCJ
ZAHARAH IBRAHIM FCJ
[CIVIL APPEAL NO: 01(f)-11-04-2016(B)]
18 JULY 2017

LAND LAW: *Acquisition of land – Compensation – Award by Land Administrator – Rightful party to claim for compensation – Determination of 'person interested' – Whether registered proprietor or occupier of land – Whether occupier of land first party to be affected by compulsory acquisition – Whether occupier of land would be evicted and lose possession of land – Whether occupier was bona fide purchaser and established lawful interest in land – Whether there was a need to establish registrable interest under National Land Code to be entitled to compensation – Whether consent of State Authority required to transfer land – Whether a constructive trust in favour of occupier of land had arisen by operation of law – Land Acquisition Act 1960, ss. 2, 12*

The Selangor State Government had approved the alienation of a piece of land measuring 109.265 acres in the Mukim of Jugra and an area measuring 137 acres in the Mukim of Api-Api to the appellant, a statutory body and agency of the State of Selangor. With the approvals for alienation, the appellant became the beneficial owner of both the Jugra and Api-Api lands. By a sale and purchase agreement ('the first agreement'), the appellant sold both lands to a company PKPS Aquaculture Sdn Bhd ('PKPS Aquaculture') in which it was a shareholder. On the same day, the appellant entered into a sale of shares agreement ('the second agreement') with another company, Suati Holdings Sdn Bhd ('Suati Holdings'). The agreement was for the sale of all the appellant's shares in PKPS Aquaculture to Suati Holdings for a purchase consideration of RM4 million. Pursuant to cl.7 of the first agreement, the appellant delivered vacant possession of the Jugra and Api-Api lands to PKPS Aquaculture, thereby divesting all its rights, title and interest in the two lands to PKPS Aquaculture. By a sale and purchase agreement ('third agreement'), PKPS Aquaculture agreed to sell the Api-Api land to the respondent, JW Properties Sdn Bhd. Upon a deed of assignment, PKPS Aquaculture assigned all its rights, title and interest in the Api-Api land to the respondent. It was only after this sale of the Api-Api land to the respondent by PKPS Aquaculture that the issue document of title to the land was issued. However, it was issued under the name of the appellant as the registered owner.

The appellant was duly informed by the respondent of the assignment of rights to the respondent by PKPS Aquaculture *vide* a letter where the respondent requested the appellant to procure the issuance of the issue document of title to the Api-Api land and thereafter to transfer the land to the respondent. Subsequently, a s. 8 Notice in Form D was published in the *Gazette* for the intended acquisition of the Api-Api land. An acquisition would have the effect of evicting the respondent from the land, on which they had spent RM4 million to acquire and of which they had been in occupation without interruption for close to 20 years. A land enquiry that followed resulted in an award being made by the Land Administrator in favour of the appellant in the sum of RM3,035,145. The High Court decided that the respondent was not the beneficial owner of the Api-Api land and accordingly ruled that the person to whom the compensation sum ought to be payable to was the registered proprietor of the land, the appellant. Dissatisfied, the respondent appealed to the Court of Appeal. The Court of Appeal, in unanimously allowing the respondent's appeal, held that the respondent had established its lawful interest in the Api-Api land and was a *bona fide* purchaser for value of the Api-Api land. The Court of Appeal went on to state that a constructive trust had arisen in favour of the respondent and that the appellant held the Api-Api land as constructive trustee for the respondent. Hence, the appellant appealed.

Leave to appeal was granted on the following questions of law: (1) where a vendor sells land subject to a restriction in interest that said land can only be transferred with the consent of the State Authority, and where a purchaser has paid the purchase price for the state land, whether in the absence of the consent of the State Authority to transfer the land to the purchaser (i) the vendor can in law be a bare or constructive trustee over said land; (ii) whether the purchaser was entitled in law to sell the said land to a third party; and/or (iii) whether the said third party can acquire an equitable interest in the said land of a nature that entitles the said third party to be entitled to compensation under the Land Acquisition Act 1960 ('the Act'); and (2) whether the unconscionable conduct of the vendor, if any, had basis in law for the third party to establish an equitable interest in the said land of a nature that entitled the said third party to be entitled to compensation under the Act.

Held (dismissing appeal with costs)

Per Zulkefli Ahmad Makinudin PCA delivering the judgment of the court:

(1) Before a person is entitled to claim compensation on account of a compulsory acquisition of land, he must be a 'person interested' within the meaning of the Act. If the Act envisaged that only a registered proprietor or a person with registered interest is entitled to claim

compensation on account of a compulsory acquisition of land, the Act would have adopted the term 'registered proprietor' or 'person with registered interest' as the basis to claim compensation. A 'person interested' to be entitled to compensation would have to suffer a loss by reason of the acquisition. This is in conformity with the principle that an occupier or party in possession of the land is *prima facie* entitled to compensation. An occupier is the first party to be affected by the compulsory acquisition, being evicted and losing its possession of the land, thereby suffering a loss. (paras 37-44)

(2) One has to enquire into the facts and circumstances of the case to determine which person interested had suffered a loss by reason of the acquisition and was therefore entitled to the compensation. Hence, there is the necessity of an enquiry under s. 12 of the Act. Herein, the appellant had already sold the Api-Api land to PKPS Aquaculture and received the full purchase price of RM4 million. The appellant did not refund at all the purchase price it received for the sale of the Api-Api land. The appellant had delivered vacant possession of the Api-Api land to PKPS Aquaculture. The respondent was a *bona fide* purchaser for value of the Api-Api land from PKPS Aquaculture. The respondent had enjoyed quiet uninterrupted possession of the Api-Api land for close to 20 years. The respondent was in lawful occupation of the land at the time the compulsory acquisition took place. Thus, it was the respondent who had genuinely suffered a loss by reason of the compulsory acquisition of the Api-Api land under the Act. (paras 50 & 51)

(3) The submission of the appellant that there was a need for consent of the State Authority to transfer the land, which pertained to a registrable interest in land under the National Land Code ('NLC'), was not a relevant consideration for the purpose of establishing an interest in compensation under the Act. The respondent, as the claimant, was not required to establish a registrable interest under the NLC to be entitled to compensation under the Act. A claimant need only to establish an interest in the compensation to be awarded. The issue of consent of the State Authority to transfer the land was in actual fact a non-issue. (paras 52-54)

(4) A constructive trust is a creature of equity. By its very nature, whether or not a constructive trust arises in the absence of the consent of the State Authority to transfer the land is very much dependent on the facts of the case. A constructive trust arises whenever the circumstances are such that it would be unconscionable for the owner of the property to assert his own beneficial interest in the property and deny the beneficial interest of another. The fact pattern of the present case fell squarely within the parameters of a constructive trust. It was therefore

unconscionable for the appellant to assert its own interest over the Api-Api land while denying the rightful interest of the respondent. A constructive trust in favour of the respondent had arisen by operation of law. Thus, both questions (1) and (2) were answered in the affirmative. (paras 57-62)

Bahasa Malaysia *Headnotes*

Kerajaan Negeri Selangor telah meluluskan pemberimilikan sebidang tanah berukuran 109,265 hektar di Mukim Jugra dan satu kawasan berukuran 137 hektar di Mukim Api-Api kepada perayu, satu badan berkanun dan agensi Negeri Selangor. Dengan kelulusan pemberimilikan tersebut perayu menjadi pemilik benefisial kedua-dua tanah Jugra dan Api-Api. Melalui satu perjanjian jual beli ('perjanjian pertama'), perayu menjual kedua-dua tanah tersebut kepada sebuah syarikat, PKPS Aquaculture Sdn Bhd ('PKPS Aquaculture'), di mana perayu adalah pemegang saham. Pada hari yang sama, perayu memasuki satu perjanjian jualan saham ('perjanjian kedua') dengan syarikat lain, Suati Holdings Sdn Bhd ('Suati Holdings'). Perjanjian adalah untuk jualan semua saham perayu dalam PKPS Aquaculture kepada Suati Holdings untuk pertimbangan pembelian RM4 juta. Menurut kl. 7 perjanjian pertama, perayu menyerahkan milikan kosong tanah Jugra dan tanah Api-Api kepada PKPS Aquaculture, dengan itu melupuskan semua hak, hak milik dan kepentingannya dalam kedua-dua tanah tersebut kepada PKPS Aquaculture. Melalui satu perjanjian jual beli ('perjanjian ketiga'), PKPS Aquaculture bersetuju untuk menjual tanah Api-Api kepada responden, JW Properties Sdn Bhd. Atas surat ikatan penyerahhakan, PKPS Aquaculture menyerahkan segala hak, hak milik dan kepentingannya dalam tanah Api-Api kepada responden. Satu dokumen hak milik tanah dikeluarkan hanya selepas jualan tanah Api-Api kepada responden oleh PKPS Aquaculture. Walau bagaimanapun, ia dikeluarkan bawah nama perayu sebagai pemilik berdaftar.

Perayu telah dimaklumkan oleh responden berkenaan penyerahan hak kepada responden oleh PKPS Aquaculture melalui surat di mana responden meminta perayu mendapatkan pengeluaran dokumen hak milik tanah Api-Api dan memindah milik tanah kepada responden. Selanjutnya, notis s. 8 dalam Borang D diterbitkan dalam *Warta* untuk pengambilan tanah Api-Api. Pengambilan tanah akan membawa kesan mengusir responden dari tanah itu, di mana responden telah membelanjakan sejumlah RM4 juta untuk memperolehinya dan telah diduduki oleh responden tanpa gangguan selama 20 tahun. Inkuiri tanah yang berlaku seterusnya mengakibatkan award yang diberikan oleh pentadbir tanah memihak pada perayu berjumlah RM3,035,145. Mahkamah Tinggi memutuskan bahawa responden bukan pemilik benefisial tanah Api-Api dan dengan itu pihak yang harus dibayar jumlah pampasan adalah pemilik berdaftar tanah, iaitu perayu. Tidak

berpuas hati, responden merayu ke Mahkamah Rayuan. Mahkamah Rayuan, dalam keputusannya, sebulat suara membenarkan rayuan responden, memutuskan responden telah membuktikan kepentingan undang-undangnya dalam tanah Api-Api dan adalah pembeli *bona fide* dengan nilai tanah Api-Api. Mahkamah Rayuan juga menyatakan bahawa satu amanah konstruktif timbul memihak pada responden dan memutuskan bahawa perayu memegang tanah Api-Api sebagai pemegang amanah untuk responden. Oleh itu, perayu merayu.

Kebenaran untuk merayu diberikan berdasarkan persoalan undang-undang: (1) di mana vendor menjual tanah yang tertakluk pada sekatan dalam kepentingan bahawa tanah tersebut hanya boleh dipindah milik dengan kebenaran Pihak Berkuasa Negeri, dan di mana pembeli telah membayar harga belian untuk tanah negeri, sama ada dalam ketiadaan kelulusan Pihak Berkuasa Negeri untuk memindah milik tanah kepada pembeli (i) vendor boleh dari segi undang-undang menjadi pemegang amanah konstruktif atas tanah tersebut; (ii) sama ada pembeli berhak dari segi undang-undang untuk menjual tanah tersebut kepada pihak ketiga; dan/atau (iii) sama ada pihak ketiga tersebut boleh memperoleh kepentingan yang saksama dalam tanah tersebut yang boleh menyifatkan pihak ketiga tersebut berhak ke atas pampasan di bawah Akta Pengambilan Tanah 1960 ('Akta'); dan (2) sama ada kelakuan tidak berpatutan vendor, jika ada, mempunyai asas dalam undang-undang untuk pihak ketiga membuktikan kepentingan ekuiti dalam tanah tersebut menyifatkan pihak ketiga berhak mendapatkan pampasan bawah Akta.

Diputuskan (menolak rayuan dengan kos)
Oleh Zulkefli Ahmad Makinudin PMR menyampaikan penghakiman mahkamah:

(1) Sebelum seseorang berhak menuntut pampasan atas pengambilan tanah, dia haruslah menjadi 'pihak yang berkepentingan' dalam maksud Akta. Jika Akta membayangkan hanya pemilik berdaftar atau seseorang yang mempunyai kepentingan berdaftar berhak untuk menuntut pampasan atas pegambilan tanah, Akta akan menggunakan terma 'registered proprietor' atau 'person with registered interest' sebagai asas tuntutan pampasan. 'Pihak yang berkepentingan' yang berhak menuntut pampasan harus mengalami kerugian akibat pengambilan tanah. Ini bersesuaian dengan prinsip bahawa penghuni atau pihak yang mempunyai milikan tanah *prima facie* berhak mendapat pampasan. Penghuni adalah pihak pertama yang akan terjejas akibat pengambilan tanah, kerana diusir dan kehilangan tanah miliknya, dengan itu mengalami kerugian.

(2) Fakta-fakta dan keadaan kes harus diteliti bagi menentukan pihak berkepentingan yang mengalami kerugian akibat pengambilan tanah dan mempunyai hak ke atas pampasan. Oleh itu, terdapat keperluan untuk satu inkuiri bawah s. 12 Akta. Di sini, perayu telah menjual tanah Api-Api kepada PKPS Aquaculture dan menerima harga belian penuh RM4 juta. Perayu langsung tidak membayar balik harga belian tanah Api-Api. Perayu telah menyerahkan milikan kosong tanah Api-Api kepada PKPS Aquaculture. Responden adalah pembeli *bona fide* tanah Api-Api daripada PKPS Aquaculture. Responden telah menikmati pemilikan yang tidak terganggu tanah Api-Api selama 20 tahun. Responden adalah penghuni sah tanah tersebut semasa pengambilan tanah berlaku. Responden adalah pihak yang mengalami kerugian akibat pengambilan tanah Api-Api bawah Akta.

(3) Hujahan perayu bahawa terdapat keperluan untuk kebenaran Pihak Berkuasa Negeri untuk pindah milik tanah, yang berhubungan dengan kepentingan berdaftar dalam tanah bawah Kanun Tanah Negara ('KTN'), bukan pertimbangan relevan bagi tujuan membuktikan kepentingan dalam pampasan bawah Akta. Responden sebagai penuntut tidak perlu membuktikan kepentingan berdaftar bawah KTN untuk membuktikan haknya ke atas pampasan bawah Akta. Penuntut hanya perlu membuktikan kepentingan dalam pampasan yang diawardkan. Isu kebenaran Pihak Berkuasa Negeri untuk memindah milik tanah bukan satu isu dalam kes ini.

(4) Amanah konstruktif diwujudkan oleh ekuiti. Sama ada amanah konstruktif timbul dalam ketiadaan kebenaran oleh Pihak Berkuasa Negeri untuk memindah milik tanah, bergantung pada fakta kes. Amanah konstruktif timbul apabila keadaan sedemikian rupa sehingga ia tidak berpatutan untuk pemilik tanah menegaskan kepentingan benefisialnya sendiri ke atas tanah itu dan menafikan kepentingan benefisial pihak yang lain. Corak fakta kes ini terjatuh dalam parameter amanah konstruktif. Oleh itu, adalah tidak berpatutan untuk perayu menegaskan kepentingannya ke atas tanah Api-Api sambil menafikan kepentingan sah responden. Satu amanah konstruktif yang memihak pada responden timbul melalui operasi undang-undang. Oleh itu, kedua-dua soalan (1) dan (2) dijawab secara afirmatif.

Case(s) referred to:

Brown v. Heffer [1967] 116 CLR 344 ***(dist)***

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761 FC ***(refd)***

Hassan Kadir & Ors v. Mohamed Moidu Mohamed & Anor [2011] 5 CLJ 136 FC ***(refd)***

Himalaya Tiles & Marble (P.) Ltd v. FV Coutinho AIR 1980 SC 1118 ***(refd)***

JC Galstaun, Obiector v. Secretary of State for India In Council & Ors [1905-1906] 10 CWN 195 ***(refd)***

KS Banerjee v. Jatindra Nath Paul and Other AIR 1928 Calcutta 475 ***(refd)***

Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2010] 4 CLJ 419 CA ***(refd)***

Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 2 CLJ 422 HC ***(refd)***
Oppenheimer v. Minister of Transport [1941] 3 All ER 485 ***(refd)***
Perwira Habib Bank Malaysia v. Loo & Sons Realty Sdn Bhd [1995] 4 CLJ 619 HC ***(refd)***
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals [2011] 1 CLJ 95 CA ***(refd)***
Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA ***(refd)***
Stern v. McArthur [1987-1988] 165 CLR 489 ***(refd)***
Sunderlal v. Paramsukhdas AIR 1968 SC 366 ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor [2010] 1 CLJ 381 FC ***(refd)***
Tay Choo Foo v. Tengku Mohd Saad Tengku Mansur & Ors And Another Appeal [2009] 2 CLJ 363 CA ***(refd)***
Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors [2012] 2 CLJ 712 CA ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 2, 8, 11(1), 12(2)

For the appellant - Malik Imtiaz Sarwar, Ashok Kandiah, Mahendran Kanapathy, Surendra Ananth & Prathib Patmanabon; M/s Harniza & Co
For the respondent - Jason Lai & NurulShafiah Abdul Shukor; M/s Munhoe & Mar

[Editor's note: For the Court of Appeal judgment, please see JW Properties Sdn Bhd v. Perbadanan Kemajuan Pertanian Selangor & Anor [2016] 1 CLJ 13 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Zulkefli Ahmad Makinudin PCA:

Introduction

[1] This is an appeal by the appellant against the decision of the Court of Appeal in allowing the respondent's appeal against the decision of the High Court in awarding the compensation sum of RM3,035,145 ("the compensation sum") to the appellant in the land reference proceedings referred to the court by the land administrator.

[2] The subject matter of the land reference proceedings is the compensation sum awarded by the land administrator of Kuala Selangor for the compulsory acquisition of the land held under HS(D) 4588, Lot PJ 3708, Mukim Api-Api, District of Kuala Selangor ("Api-Api land") pursuant to the Land Acquisition Act 1960 ("the Act").

[3] The High Court decided that the appellant was entitled to receive the compensation sum. The Court of Appeal reversed the decision of the High Court and held that the respondent is the party entitled to receive the said compensation on account of the compulsory acquisition of the Api-Api land.

[4] Leave to appeal was granted to the appellant on the following questions of law:

(a) Where a vendor sells land subject to a restriction in interest that said land can only be transferred with the consent of the State Authority, and where a purchaser has paid the purchase price for the said land, whether in the absence of the consent of the State Authority to transfer the land to the purchaser:

(i) the vendor can in law be a bare or constructive trustee over said land;

(ii) whether the purchaser is entitled in law to sell the said land to a third party; and/or

(iii) whether the said third party can acquire an equitable interest in the said land of a nature that entitles the said third party to be entitled to compensation under the Act.

(b) With reference to question (1) above, whether the unconscionable conduct of the vendor, if any, has basis in law for the third party to establish an equitable interest in the said land of a nature that entitles the said third party to be entitled to compensation under the Act.

Background Facts

[5] The relevant background facts of the case are these. By alienation letter dated 13 June 1990, the Selangor State Government approved the alienation of a piece of land measuring 109.265 acres in the Mukim of Jugra, in the District of Kuala Selangor ("the Jugra land") to the appellant, a statutory body and agency of the State Government of Selangor. Two years later, by alienation letter dated 28 July 1992, the State Government approved the alienation of another piece of land to the appellant. This time for an area measuring 137 acres in the Mukim of Api-Api, also in the District of Kuala Selangor. This is the subject matter of the present appeal.

[6] At the time of the approvals, the issue documents of title for these two plots of land had yet to be issued by the State Authority. Both lands were subject to the category of land use as being for aquaculture only and were also subject to a restriction in interest that the lands shall not be sold, leased, charged or transferred in any way whatsoever without the consent of the State Authority.

[7] With the approvals for alienation, the appellant became the beneficial owner of both the Jugra and the Api-Api lands. By a sale and purchase agreement executed on 31 July 1995 ("the first agreement"), the appellant in its capacity as beneficial owner sold both lands to a company in which it was a shareholder, namely PKPS Aquaculture Sdn Bhd ("PKPS

Aquaculture"). On the same day that it sold the Jugra and Api-Api lands to PKPS Aquaculture, the appellant entered into a sale of shares agreement ("the second agreement") with another company under the style and name of Suati Holdings Sdn Bhd ("Suati Holdings"). The agreement was for the sale of all the appellant's shares in PKPS Aquaculture to Suati Holdings for a purchase consideration of RM4 million. Under the agreement, Suati Holdings was also to take over and assume full responsibility for PKPS Aquaculture's liabilities in the sum of RM7 million which included the corporate guarantee in the sum of RM4 million by the appellant. This second agreement was referred to in cl. 6 of the first agreement as follows:

> By another agreement of even date (hereinafter referred to as "the Sale of Shares Agreement") between the Vendors herein of the one part and Suati Holdings Sdn Bhd of the other part, the Vendors herein have agreed to sell and the said Suati Holdings Sdn Bhd have agreed to purchase the entire issued shares of the Purchasers herein upon the consideration and subject to the terms and conditions contained in the said Sale of Shares Agreement, a copy of which is hereby annexed to this Agreement and to be considered as an integral part of this Agreement.

[8] Clause 3 of the first agreement is crucial and is reproduced in full below to provide context:

> **Permission Of The Relevant Authorities**
>
> (1) The parties hereto expressly agree and declare that this sale and purchase agreement shall be subject to the parties securing the necessary consents and approvals from the State Authority of Selangor Darul Ehsan as well as from the Foreign Investment Committee.
>
> (2) The consents aforementioned shall be obtained by the vendors or the purchasers (as the case may be) within six (6) months of the date of this Agreement (hereinafter referred to as "the original period") or such longer time as the parties hereto may subsequently in writing agree (hereinafter referred to as "the extended period").
>
> (3) In the event that the consent herein mentioned shall not be obtained by the Vendors within the original period or the extended period, this agreement shall be determined and upon such determination this Agreement shall forthwith become null and void and cease to have any further fare and effect whatsoever and whatever monies (if any) as shall have been paid by the Purchasers to the Vendors under the terms of this Agreement shall be refunded in full to the Purchasers free from interest and thereafter no party shall have any claims whatsoever against the other under this Agreement.

[9] As for the mode of payment for the sale of the Jugra and Api-Api lands to PKPS Aquaculture, this was set out in cl. 2 of the first agreement in the following terms:

> Subject to Clauses 3 and 8 herein, the purchase price shall be paid by the Purchasers to the Vendors in the manner as stipulated in section 2 of the First Schedule hereto, which said payment shall have regard to the provisions of Clause 3.2 of the Sale of Shares Agreement as referred to in Recital (6) of this Agreement. Upon payment being made by the aforesaid SUATI HOLDINGS SDN BHD to the Vendors pursuant to the said Clause 3.2 of the Sale of Shares Agreement, the parties hereby declare that the purchase price as stipulated in the First Schedule hereto shall be deemed conclusively to have been paid by the Purchasers hereto to the Vendors.

[10] Pursuant to cl. 7 of the first agreement, the appellant delivered vacant possession of the Jugra and Api-Api lands to PKPS Aquaculture, thereby divesting all its rights, title and interest in the two lands to PKPS Aquaculture.

[11] Having been bought over by Suati Holdings, PKPS Aquaculture changed its name to "Suati Aquaventures Sdn Bhd". To avoid confusion, we shall refer to Suati Aquaventures Sdn Bhd still as PKPS Aquaculture. By a sale and purchase agreement dated 16 April 1997 ("the third agreement"), PKPS Aquaculture agreed to sell the Api-Api land to the respondent, JW Properties Sdn Bhd.

[12] Under a deed of assignment of even date, PKPS Aquaculture assigned all its rights, title and interest in the Api-Api land to the respondent. It was only after this sale of the Api-Api land to the respondent by PKPS Aquaculture that the issue document of title to the land was issued on 27 March 1998. But it was issued under the name of the appellant as the registered owner and the appellant remains the registered owner of the land to this day.

[13] The appellant was duly informed by the respondent of the assignment of rights to the respondent by PKPS Aquaculture *vide* letter dated 12 November 1998. In the same letter, the respondent requested the appellant to procure the issuance of the issue document of title to the Api-Api land and thereafter to transfer the land to the respondent. The respondent also notified the appellant that it had expended a large sum of money on the land by improving it and developing it into an operational aquaculture farm.

[14] On 16 December 2011, a s. 8 notice in Form D was published in the Gazette for the intended acquisition of the Api-Api land. An acquisition would have the effect of evicting the respondent from the land, on which they had spent RM4 million to acquire and of which they had been in occupation without interruption for close to 20 years.

[15] A land enquiry that followed resulted in an award being made on 15 February 2012 by the land administrator in favour of the appellant in the sum of RM3,035,145. In view of the competing claims by the appellant and the respondent over the compensation, the land administrator ordered the awarded sum to be deposited into court pending the determination of their claims by the High Court.

[16] On 4 July 2014 the learned Judge of the High Court decided that the respondent was not the beneficial owner of the Api-Api land and accordingly ruled that the person to whom the compensation sum to be payable was the registered proprietor of the land, and that is the appellant.

Findings Of The High Court

[17] The High Court was called upon to determine the question of whether the appellant or the respondent was entitled to receive the compensation sum arising from the acquisition of the Api-Api land. The High Court decided that the person entitled to receive the compensation sum was the appellant.

[18] The grounds of decision of the learned High Court Judge, amongst others, can be summarised as follows:

(a) It does not automatically flow that a person interested within the meaning of ss. 2 and 12 of the Act will be the person to whom compensation is payable. The terms "a person interested" and the "person to whom it is payable" are not synonymous.

(b) The respondent did not acquire any beneficial interest in the Api-Api land as the consent of the State Authority was not obtained. Without the said consent, PKPS Aquaculture did not have any beneficial interest to pass to the respondent.

(c) The appellant was not a bare trustee of the Api-Api land for the respondent as the appellant had not given PKPS Aquaculture a duly executed, valid and registrable transfer of the said land since the consent of the State Authority had not been obtained.

(d) It was open to the respondent to seek for the refund of the purchase price of RM4,000,000 in a civil suit.

Findings Of The Court Of Appeal

[19] Being dissatisfied with the decision, the respondent appealed to the Court of Appeal.

[20] The Court of Appeal unanimously allowed the respondent's appeal and held that the respondent is the person entitled to receive the compensation sum for the acquisition of the Api-Api land under the Act.

[21] The Court of Appeal in its judgment, amongst others, had followed the decision of the Federal Court in the case of *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761; [2011] 2 MLJ 729 which held that to determine whether a claimant is a "person interested" within the meaning of the Act, one has to take into account the background facts leading to the issuance of the declaration that the land was required for a public purpose under s. 8 of the Act. The interest that a claimant is required to establish for the purpose of establishing his claim for compensation under the Act is different from the interest that is recognised under the National Land Code ("NLC"), which stresses on registration or registrable interest.

[22] The Court of Appeal also held that registration alone cannot be the basis for determining an interested person's entitlement to compensation under the Act. There is the necessity to conduct an enquiry under s. 12 of the Act.

[23] The Court of Appeal held that on the evidence before them, the respondent had established its lawful interest in the Api-Api land. The respondent as a *bona fide* purchaser for value of the Api-Api land had acquired sufficient lawful interest over the land to entitle it to be paid the compensation sum.

[24] The Court of Appeal further held that the appellant's insistence that it be paid the compensation sum by reason of it being the registered proprietor of the land without considering the respondent's interest is an unconscionable conduct. The Court of Appeal went on to state that the fact pattern of this case falls squarely within the parameters of a constructive trust. A constructive trust had arisen in favour of the respondent and that the appellant held the Api-Api land as constructive trustee for the respondent.

Submissions Of The Appellant

[25] Learned counsel for the appellant submitted that the court should take a liberal approach in construing the term "person interested" who would be entitled to compensation under the Act. Who the "person interested" is would only be defined after an enquiry within the meaning of section 12(2) of the Act. It is the appellant's case that only persons who have a registrable, equitable or beneficial interest in the land are entitled to compensation. It is not disputed that the appellant is the sole registered owner of the Api-Api land. The onus is on the respondent to show that it has beneficial or equitable interest in the said land.

[26] Learned counsel for the appellant posed the question as to whether the respondent can, in law, acquire any beneficial or equitable interest by reason of sale of land where, despite the sale being subject to the consent of the State Authority, such consent has not been procured. It was argued for the

appellant that the courts in Malaysia have concluded that beneficial or equitable interest cannot pass to a purchaser if consent of the State Authority has not been obtained. (See the case of *Perwira Habib Bank Malaysia v. Loo & Sons Realty Sdn Bhd* [1995] 4 CLJ 619).

[27] On the issue of unconscionable conduct as raised in the second question of law posed before this court, learned counsel for the appellant submitted that this issue was only raised by the respondent in the Court of Appeal and not before the High Court.

[28] The respondent had relied on the allegations of unjust enrichment and unconscionable conduct to argue that a constructive trust had arisen by operation of law. To the appellant, the Court of Appeal was wrong in deciding the case on a cause of action that was not pleaded. This is not permitted and it was impressed upon us that this ground ought to be disregarded.

[29] It is the appellant's case that the Court of Appeal had erroneously imposed a constructive trust as a remedial device to grant the respondent proprietary rights over the Api-Api land. A constructive trust on the ground of unconscionability will not be imposed on the general notion of fairness. A constructive trust will only be imposed in exceptional circumstances.

Submissions Of The Respondent

[30] Learned counsel for the respondent submitted that a "person interested" is not required to establish an interest in land in the legal or proprietary sense under the provisions of the NLC to be entitled to compensation. It would suffice for the "person interested" to establish an interest in the compensation awarded.

[31] It is the contention of the respondent that the person who is entitled to compensation is a "person interested" within the meaning of the Act and a person who has suffered a loss by reason of the acquisition of land. The requirement that a "person interested", to be entitled to compensation, would need to suffer a loss by reason of the acquisition is in conformity with the principle that an occupier or party in possession of the land is *prima facie* entitled to compensation under the law of land acquisition. Applying the aforesaid principle to the facts of this case the appellant had already sold the Api-Api land to PKPS Aquaculture and received the full purchase price of RM4 million. The appellant had already delivered vacant possession of the Api-Api land to PKPS Aquaculture and was not a party in possession of the land.

[32] The respondent is a *bona fide* purchaser for value of the Api-Api land from PKPS Aquaculture. The respondent had enjoyed quiet uninterrupted possession of the land for close to 20 years. The respondent was in lawful occupation of the land since 1997 and was still in lawful occupation at the time the acquisition took place in 2011.

[33] It should also be noted that the respondent with the knowledge of the appellant had expended large sums of money to develop and improve the Api-Api land. In short, it is the respondent who had genuinely suffered a loss by reason of the acquisition of the Api-Api land under the Act including the loss of enjoyment and occupation of the land. It is the respondent who should be compensated for the loss it had suffered by reason of the acquisition of the Api-Api land, and must be deemed to have established an interest in the compensation awarded.

[34] It is also the contention of the respondent, applying the principles of constructive trust to the facts of this case, that it would be unconscionable for the appellant to assert its own interest over the Api-Api land and deny the beneficial interest of the respondent *qua bona fide* purchaser for value. The appellant would be unjustly enriched if it were to be paid the compensation from the acquisition of the Api-Api land. On the other hand, the respondent would be unjustly deprived if it were not paid the compensation.

[35] It is the respondent's case that a constructive trust would arise automatically by operation of law in favour of the respondent.

Decision Of This Court

[36] At the outset, we would like to state here that the Act is a special statute specifically enacted to deal with all matters on account of a compulsory acquisition of land, including a claim for compensation. (See the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor. And Other Appeals* [2011] 1 CLJ 95; [2011] 4 MLJ 403). Accordingly, an interest that a claimant is required to establish for the purpose of obtaining compensation under the Act must be different from an interest that is recognised under the NLC which stresses on registered interest or registrable interest in land.

[37] Before a person is entitled to claim compensation on account of a compulsory acquisition of land, he must be a "person interested" within the meaning of the Act. By way of definition, s. 2 of the Act states as follows:

> 'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.

[38] We agree with the submission of learned counsel for the respondent that if the Act had envisaged that only a registered proprietor or a person with registered interest is entitled to claim compensation on account of a compulsory acquisition of land, the Act would have adopted the term "registered proprietor" or "person with registered interest" as the basis to

claim compensation. In such a case, there would be no necessity to conduct an enquiry under s. 12 of the Act as the person entitled to receive compensation would be reflected in the document of title. Section 12(2) of the Act provides:

> The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.

[39] In the case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor.* [2009] 4 CLJ 57; [2009] 3 MLJ 809, the Court of Appeal in itemising the different categories of "person interested" under the Act have included the following persons:

(a) A person who has entered into a contract to purchase a piece of land, ie, a beneficial owner, following the case of *JC Galstaun, Obiector v. Secretary of State for India In Council & Ors.* [1905-1906] 10 CWN 195.

(b) An option holder, following the case of *Oppenheimer v. Minister of Transport* [1941] 3 All ER 485. In the case of *Oppenheimer v. Minister of Transport*, the claimant had obtained an option to purchase land which was subsequently the subject of a compulsory acquisition under the Lands Clauses Consolidation 1845. The English High Court held that the option gave the claimant an interest in the land in respect of which he would be entitled to compensation if the land was compulsorily acquired.

(c) A person having an equitable interest in the acquired property under trust, following the case of *KS Banerjee v. Jatindra Nath Paul and Other* AIR 1928 Calcutta 475.

[40] The question that has to be posed here is whether a "person interested" is required to establish an interest in land as we understand the term to be in the context of the NLC to be entitled to compensation. Reference to the Indian case authorities are relevant in this regard, as our Act is substantively similar to the Indian Land Acquisition Act 1894. From a perusal of the Indian case authorities which have been subsequently adopted by our Malaysian courts, it is clear that the law on land acquisition does not necessitate a "person interested" to establish an interest in land to be entitled to compensation. It would suffice for the "person interested" to establish an interest in the compensation on account of the compulsory acquisition of the land, to be entitled to compensation.

[41] In the case of *Sunderlal v. Paramsukhdas* AIR 1968 SC 366, the Indian Supreme Court had this to say:

> It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded.

[42] In another case of *Himalaya Tiles & Marble (P.) Ltd v. F.V. Coutinho* AIR 1980 SC 1118, the Indian Supreme Court, amongst others, stated as follows:

> It seems to us that the definition of 'a person interested' given in Section 18 is an inconclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title or in the question of compensation.

[43] The aforesaid Indian Supreme Court cases of *Sunderlal v. Paramsukhdas and Himalaya Tiles* were cited with approval by our Malaysian Court in *Magasu Sundram T Magasu & Ors. v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 422; [2003] 5 MLJ 470. The case of *Magasu Sundram* was in turn cited with approval by other cases delivered by the Malaysian Courts as follows:

(i) the Court of Appeal in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor.* [2009] 4 CLJ 57; [2009] 3 MLJ 809;

(ii) the Court of Appeal in *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2010] 4 CLJ 419; [2009] 5 MLJ 14; and

(iii) the Federal Court in *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761; [2011] 2 MLJ 729.

[44] We are also of the view that a "person interested" to be entitled to compensation would have to suffer a loss by reason of the acquisition. This is in conformity with the principle that an occupier or party in possession of the land is *prima facie* entitled to compensation. This is because an occupier is the first party to be affected by the compulsory acquisition, being evicted and losing its possession of the land, thereby suffering a loss. On this point useful reference can be made to *Sanjiva Row's Law of Land Acquisition and Compensation* (8th edn) commenting as follows:

> Where rival claims are made in respect of the compensation awarded, the *prima facie* title to the money is with the party who is in sole and exclusive possession of the land at the time of its acquisition by the government, and the onus is on the party claiming that he has a better or superior title to prove such title.

[45] In the context of the meaning of "person interested" s. 11 of the Act places the "occupier" (under para. (a)) before a "registered proprietor" (under para. (b)).

[46] Section 11(1) of the Act provides as follows:

> The Land Administrator shall, in addition to giving public notice as required by section 10(1), in respect of all scheduled land specified in every notice in Form E, serve copies of such notice in the manner described by section 53, upon:

(a) the occupier of such land;

(b) the registered proprietor of such land, where he is not the occupier thereof;

(c) any person having a registered interest in such land; and

(d) any person whom he knows or has reason to believe to be interested therein.

[47] It is also noted that the notice under Form E (Second Schedule) of the Act is required to be served on the person interested to appear before the land administrator which includes all persons having interests in the said land, whether as proprietor, occupier, lessee, chargee, tenant or otherwise.

[48] It is also clear that a tenant for a fixed term (eg, two years), who does not have an interest in the land in the legal or proprietary sense, is a "person interested" and entitled to compensation. This is because the tenant would have suffered a loss by reason that he would lose his possession and enjoyment of the land for the next two years. The tenant would not have established an interest in the land but would have established an interest in the compensation by reason of the loss suffered.

[49] The principle that a "person interested" would need to have suffered a loss to be entitled to compensation is also in conformity with the definition of "person interested" under s. 2 of the Act, which expressly excludes a tenant at will. This is because a tenant at will is already liable to be evicted from the land at any given notice. Hence, he cannot claim to have suffered a loss by reason of the acquisition.

[50] It is our judgment that one has to enquire into the facts and circumstances of the case to determine which person interested had suffered a loss by reason of the acquisition and is therefore entitled to the compensation. Hence, there is the necessity of an enquiry under s. 12 of the Act. Applying the aforesaid principle to the facts of the present case, the following findings of facts can be made:

(a) The appellant had already sold the Api-Api land to PKPS Aquaculture and received the full purchase price of RM4 million.

(b) The appellant did not refund at all the purchase price it received for the sale of the Api-Api land.

(c) The appellant had delivered vacant possession of the Api-Api land to PKPS Aquaculture.

(e) The respondent is a *bona fide* purchaser for value of the Api-Api land from PKPS Aquaculture.

(f) The respondent had enjoyed quiet uninterrupted possession of the Api-Api land for close to 20 years. The respondent was in lawful occupation of the Api-Api land since 1997 and was still in lawful occupation of the land at the time the compulsory acquisition took place in 2011.

[51] It can be safely concluded that it is the respondent who had genuinely suffered a loss by reason of the compulsory acquisition of the Api-Api land under the Act. It had the effect of evicting the respondent from the Api-Api land for which it had been in occupation without interruption for close to 20 years. On this ground alone the appeal by the appellant ought to be dismissed.

[52] As regards the submission of the appellant that there is a need for consent of the State Authority to transfer the land, which pertains to a registrable interest in land under the NLC, we are of the view this is not a relevant consideration for the purpose of establishing an interest in compensation under the Act. We noted that the whole basis for the learned judge of the High Court arriving at his decision was that the consent of the State Authority had not been obtained for the transfer of the Api-Api land to PKPS Aquaculture. The reasoning was that since no consent from the State Authority had been obtained no beneficial interest in the land had passed to PKPS Aquaculture and it follows that PKPS Aquaculture could not have passed any beneficial interest in the land to the respondent.

[53] With respect, we could not agree with the above contention of the appellant. As already alluded to in the earlier part of this judgment the respondent as the claimant is not required to establish a registrable interest under the NLC to be entitled to compensation under the Act. A claimant needs only to establish an interest in the compensation to be awarded.

[54] On the case authorities cited by the appellant and relied on by the learned Judge of the High Court that the respondent had no beneficial interest in the Api-Api land, we agree with the finding of the Court of Appeal that the *ratio decidendi* of the cases cited do not apply to the facts and circumstances of the present case. They are all not decisions on land acquisition claims under the Act, which is a special statute enacted to deal with a claim by a "person interested" on account of the compulsory acquisition of land. It is our considered view that the issue of consent of the State Authority to transfer the land is in actual fact, a non-issue in the present case.

[55] We shall now deal with the issue of whether the respondent has acquired an equitable interest in the Api-Api land by reason that a constructive trust has arisen in its favour.

[56] Notwithstanding that the issue of unconscionable conduct and constructive trust was not specifically pleaded as a cause of action by the respondent and not raised before the High Court as contended by the appellant, we are of the view that from the pleaded case of both the parties it can be inferred such an issue was raised. Moreover, this is a question of law which a party may raise at any stage of the trial.

[57] It is to be noted that a constructive trust is a creature of equity. By its very nature, whether or not a constructive trust arises in the absence of the consent of the State Authority to transfer the land is very much dependent on the facts of the case. As regards the present case a relevant factor to consider is whether there was any unconscionable conduct on the part of the appellant which would attract the intervention of equity.

[58] From decided case authorities it has been established as a principle of law that constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of the property (usually but not necessarily the legal owner) to assert his own beneficial interest in the property and deny the beneficial interest of another. (See the cases of (1) *Takako Sakao v. Ng Pek Yuen & Anor.* [2010] 1 CLJ 381; [2009] 6 MLJ 751 (FC) and (2) *Vellasamy Pennusamy & Ors. v. Gurbachan Singh Bagawan Singh & Ors.* [2012] 2 CLJ 712; [2010] 5 MLJ 437 (CA)).

[59] It has also been held that a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience without reference to any express or presumed intention of the parties. (See the case of *Hassan Kadir & Ors. v. Mohamed Moidu Mohamed & Anor.* [2011] 5 CLJ 136 (FC)). A constructive trust is a remedial device that is employed to prevent unjust enrichment. It has the effect of taking the title to the property from one person whose title unjustly enriches him, and transferring it to another who has been unjustly deprived of it. (See the case of *Tay Choo Foo v. Tengku Mohd Saad Tengku Mansur & Ors. And Another Appeal* [2009] 2 CLJ 363; [2009] 1 MLJ 289 CA).

[60] Learned counsel for the appellant in his submission relied on the High Court of Australia decision of *Brown v. Heffer* [1967] 116 CLR 344 to support its proposition that no equitable interest can be created in the absence of consent of the State Authority to transfer the land. With respect, we find that the facts of the said case can be distinguished from those of the present case. There was no unconscionable conduct or equitable misconduct on the part of the vendor in *Brown v.Heffer*. Therefore, there was no issue of a constructive trust arising to create an equitable interest in the absence of the consent.

[61] It is noted that a later decision of the High Court of Australia of *Stern v. McArthur* [1987-1988] 165 CLR 489 had tempered the strictness of the decision in *Brown v. Heffer.* In *Stern v. McArthur*, it was held *inter alia* that:

> It seems that when the purchaser under a contract for the sale of land which is executory on both sides is described as the equitable owner of the land, that expression is used with somewhat less precision than in other contexts. For example, in *Brown v. Heffer* it was said that the purchaser under two contracts for the sale of land was not the equitable owner because he was unable to obtain specific performance of the contract. In that case the Court was required to determine whether a specific device of land was adeemed by the contracts which were entered into by the testator with respect to the land after the date of the will. The transfer of the land in each case was dependent upon the consent of the Minister being obtained. At the time of the death of the testator no consent had been obtained. For ademption to have occurred it was necessary that the land should in the eyes of equity have been converted at the time of death into other property. It was held that there was no notional conversion of the land into money because immediate before the testator's death, a court of equity would not, by reason of the lack of the Minister's consent, have ordered specific performance by him of his obligation under the contracts to transfer the land. Entitlement to specific performance in the strict sense was necessary before the purchaser could be regarded as the owner in equity for the purpose of ademption. But that did not mean that, even if that remedy was unavailable, the purchaser could not have an interest under either contract which equity would protect regardless of whether he could in a manner of speaking, be called the equitable owner. *In appropriate circumstances equity would have directed that proper steps be taken to obtain the Minister's consent and, consent having been obtained, that the land be transferred to the purchaser. If in those or comparable circumstances there are those who would describe the relationship between the vendor and purchaser as that of trustee and beneficial owner in some qualified sense, it does not alter the substance of the matter.* (emphasis added)

[62] Based on the facts and circumstances of the present case it is our judgment that we agree with the finding of the Court of Appeal that the fact pattern of the present case falls squarely within the parameters of a constructive trust. It would therefore be unconscionable for the appellant to assert its own interest over the Api-Api land while denying the rightful interest of the respondent. A constructive trust in favour of the respondent had arisen by operation of law.

Conclusion

[63] For the reasons above stated, we would answer both questions (1) and (2) posed before us in the affirmative. We find no merit in this appeal by the appellant. The appeal is therefore dismissed with costs.